

### **REMARKS**

Applicant respectfully requests reconsideration and allowance of claims 1 and 4-16 and 18-21 that are pending in the above-identified patent application. By the foregoing amendment, Applicant has amended claims 1, 16, and 21 herein. No new matter is added by the amendment. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance.

According to MPEP §§608.04 and 608.01(I), Applicant may rely on the drawings as originally filed to establish a disclosure. As such, Applicant relies on the drawings as originally filed, especially FIGS. 5-13, for the disclosure supporting the “angles located on the outer contour substantially away from an end of the capsule” limitation as recited in claims 1, 16, and 21.

#### **Claim Rejections under 35 U.S.C. §102(b):**

At page 2 of the Office Action, the Examiner rejected claims 1, 4-13, 16, and 18-21 under 35 U.S.C. §102(b) as being anticipated by Ohki et al. (U.S. Pat. No. 5,715,811, hereinafter referred to as “Ohki”). In view of the amendments herein, Applicant respectfully traverses the rejection.

Amended independent claims 1, 16, and 21 recite, in part, “wherein features forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis, and the outer contour of the capsule includes at least one of the following features, which are excluded from conditions of symmetry: - fine structures of any seams which are produced by sealing seams of individual parts of the capsule, - elements formed on a capsule surface which are smaller than 0.1 mm, [and] - angles of taper up to 5°, the angles located on the outer contour substantially away from an end of the capsule.”

Amended independent claim 21 further recites, in part, an additional feature that is excluded from symmetry: “- features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry of 0.15 mm in each case.”

By way of background, at least one embodiment of claims 1 and 16 cover a capsule that may have a projection (38) and a depression (39) on one or more of the capsule elements 2, 3. Such

projections (38) and depressions (39) are excluded from the conditions of symmetry when: smaller than 0.1mm and/or angles of taper up to 5° located substantially away from an end of the capsule. (See FIGS. 5-13; and page 22, line 15 through page 23, line 17.)

Applicant respectfully acknowledges the Examiner's concession from page 5 of the Office Action that Ohki does not disclose the capsule being manufactured within close tolerances such that elements formed on the capsule surface which are smaller than 0.1 mm and/or angles of taper up to 5°, the seam being offset from center 0 to 12% of an outer longitudinal length of the capsule, or a tolerance and inaccuracy deviating from the symmetry of up to 0.15 mm in each case.

Applicant submits that Ohki does not disclose or suggest that the outer contour of the capsule is symmetrical, and includes at least one of the following features that is excluded from the conditions of symmetry: (i) fine structures of any seams which are produced by sealing seams of individual parts of the capsule, (ii) elements formed on a capsule surface which are smaller than 0.1 mm, and (iii) angles of taper up to 5°, the angles located on the outer contour substantially away from an end of the capsule as recited in claims 1, 16, and 21 of the instant application. Moreover, Ohki does not disclose or suggest features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry of 0.15 mm in each case as recited in claim 21. Ohki merely discloses a capsule 17, and is silent on an outer contour of the capsule including: any fine structures of any seams, elements formed on a capsule surface which are smaller than 0.1 mm, angles of taper up to 5° located on the outer contour substantially away from an end of a capsule, and features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry of 0.15 mm in each case. On this basis alone, Ohki does not disclose each and every limitation of claims 1, 16, and 21.

Moreover, Applicant submits that Ohki does not disclose or suggest a Bernoulli effect or principle (e.g., venturi effect). Ohki is silent on such an inhaler as claimed.

In view of the above, claims 1, 16, and 21 are patentable. As claims 4-13 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, likewise patentable.

At page 3 of the Office Action, the Examiner rejected claims 1, 4-16, and 18-21 under 35

U.S.C. §102(b) as being anticipated by Hochrainer et al. (U.S. Pat. No. 5,947,118, hereinafter referred to as “Hochrainer”). In view of the amendments herein, Applicant respectfully traverses the rejection.

The requirements of claims 1, 16, and 21 are discussed above. Applicant submits that Hochrainer does not disclose or suggest that the outer contour of the capsule is symmetrical, and includes at least one of the following features that is excluded from the conditions of symmetry: (i) fine structures of any seams which are produced by sealing seams of individual parts of the capsule, (ii) elements formed on a capsule surface which are smaller than 0.1 mm, and (iii) angles of taper up to 5°, the angles located on the outer contour substantially away from an end of the capsule as recited in claims 1, 16, and 21 of the instant application. Moreover, Hochrainer does not disclose or suggest features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry of 0.15 mm in each case as recited in claim 21. Hochrainer merely discloses a capsule (FIG. 6), and is silent on an outer contour of the capsule including: any fine structures of any seams, elements formed on a capsule surface which are smaller than 0.1 mm, angles of taper up to 5° located on the outer contour substantially away from an end of a capsule, and features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry of 0.15 mm in each case. On this basis alone, Hochrainer does not disclose each and every limitation of claims 1, 16, and 21.

Moreover, Applicant submits that Hochrainer does not disclose or suggest a Bernoulli effect or principle (e.g., venturi effect). Hochrainer is silent on such an inhaler as claimed.

In view of the above, claims 1, 16, and 21 are patentable. As claims 4-15 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, likewise patentable.

Accordingly, Applicant respectfully requests that the Examiner's §102 claim rejections be withdrawn.

**Claim Rejections under 35 U.S.C. §103(a):**

At pages 4-5 of the Office Action, the Examiner has rejected: claims 1, 4-13, 16, and 18-21 under 35 U.S.C. §103(a) as being unpatentable over Ohki; and claims 1, 4-16, and 18-21 under 35

U.S.C. §103(a) as being unpatentable over Hochrainer. In view of the amendments herein, Applicant respectfully traverses the rejection.

The aforementioned deficiencies of Ohki and/or Hochrainer are not overcome under a §103 analysis. Indeed, to arrive at the present invention as claimed one would need to imbue the Ohki capsule and/or the Hochrainer capsule with structure that simply does not exist. This would clearly be improper.

Moreover, Applicant submits that Ohki or Hochrainer does not disclose the general conditions of the subject claims, and that the Examiner is improperly relying on *In re Aller*. Manufacturing capsules with the subject features would not be obvious to one having ordinary skill in the art at the time the invention was made. Ohki and Hochrainer are silent on an outer contour of the capsule including: any fine structures of any seams, elements formed on a capsule surface, angles of taper located on the outer contour substantially away from an end of a capsule, and/or features located on the outer contour of the capsule surface and forming a symmetrical pair have a tolerance and inaccuracy deviating from the symmetry in each case. Indeed, Ohki and Hochrainer do not disclose the general conditions of each feature, let alone the specific conditions: elements which are smaller than 0.1 mm, angles of taper up to 5°, and/or a tolerance and inaccuracy deviating from the symmetry of 0.15 mm. Thus, the facts of *In re Aller* are not sufficiently similar to the facts of the instant application, and reliance on *In re Aller* is improper. (See MPEP §2144.04.)

In view of the above, the teachings of Ohki or Hochrainer do not suggest the present invention as recited in claims 1, 16, and 21, and claims 1, 16, and 21 are, therefore, patentable. As claims 4-15 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, patentable.

Accordingly, Applicant respectfully requests that the Examiner's §103 claim rejections be withdrawn.

**Conclusion:**

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Respectfully submitted,

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